**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 466 of 1989**
**WITH**
**X-OBJECTION STAMP NO. 1700 OF 1990**
**WITH**
**X-OBJECTION STAMP NO. 1701 OF 1990**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE KS JHAVERI**

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**UNITED INDIA INSURANCE CO LTD - Appellant(s)**
**Versus**
**ANUPKUMAR JAYANTILAL RAS & 1 - Defendant(s)**

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**Appearance :**
MR RR MARSHALL for Appellant(s) : 1,
MR MC BHATT for Defendant(s) : 1,
MR HA RAICHURA for Defendant(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 02/08/2006**

**ORAL JUDGMENT**

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal (Main), Junagadh passed in M.A.C.P. 173 of 1984 dated 24.01.1989.

2.0 The brief facts of the case are that on 04.03.1984, when present opponent No.1 was proceeding on his moped towards Vanthali, he was

dashed by a taxi driven by present opponent No.2. On account of the said accident, opponent No.1 received serious bodily injuries. Therefore, he filled a petition claiming an amount of Rs.87,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard, learned Counsel for the parties. Opponent No.2 vide his written statement(Exh.15) has accepted the factum of the accident. However, he has not accepted that opponent No.1 received injuries on account of the rash and negligent driving on his part. The opponent No.2 was not examined before the Tribunal. It may be noted that the appellant-Insurance Company has put forward two different stories in its defence. On the one hand, the appellant has stated that on the day of incident while the opponent No.1 was proceeding on his moped he was thrown by an animal and received injuries. On the other hand,

it has put forward an altogether different story placing reliance on a news item appeared in a local daily 'Fulchhab' and has stated that on the day of incident the moped of the opponent No.1 dashed with a tree and as a result he received injuries. Therefore, in view of the fact that the stories put forward by the appellant-itself are contradictory to each other, the same cannot be accepted. It may also be noted that no police complaint or F.I.R. was lodged pertaining to the accident in question. Hence, in view of the fact that opponent No.1-himself has admitted the factum of the accident in question, the Tribunal has rightly held that the accident in question took place on account of sole negligence on the part of opponent No.1.

3.1 While considering the aspect of compensation, the Tribunal has awarded an amount of Rs.15,120/-. The said figure has been arrived at by the Tribunal by taking monthly loss at Rs.84/- and disability at 12 per cent of the body as a whole and by applying a multiplier of 12

years. However, while considering the same, the Tribunal has not considered the future rise in income of the opponent No.1. Hence, for deciding the amount of compensation under the loss of future income, it would be relevant to refer to a full bench decision of the Apex Court in the case of ***"U.P. State Road Transport Corporation & Ors. Vs. Trilok Chandra & Ors."*** reported in 1996 (4) SCC 362 [1996 (3)GLR 136]. In that decision the Court reiterated the method of working out as to what would be a 'just' compensation.

3.2 Applying the principle laid down in the aforesaid decision, the Tribunal ought to have assessed the average monthly income of the appellant at Rs.1050/- i.e.([Rs.700 X 2] + Rs.700 = Rs.2100) [2100/2 =Rs.1050]). Now, since the appellant has sustained 12 per cent disability of the body as a whole, the monthly loss of income would come to Rs.126/- i.e.(1050-12% disability= Rs.126/) and loss of income per year would come to Rs.1512/-. The Tribunal has adopted a

multiplier of 15 years. Looking to the age of the appellant the multiplier adopted by the Tribunal is just and reasonable. Hence, the total loss of future income would come to Rs.22,680/- i.e. (Rs.1512 X 15 years = 22,680/-). Since, the Tribunal has awarded Rs.15,120/-, the opponent No.1 shall be entitled for an additional amount of Rs.7,560/-.

3.3 It may be noted that, though, the appellant has produced bills for only Rs.644.60/- towards medicine, the Tribunal has awarded an amount of Rs.3,000/- under the said head. Therefore, the excess amount awarded by the Tribunal requires to be deducted. Hence, after deducting the said amount the appellant shall be refunded an amount of Rs.(3000-644.60 = 2355.40/-).

4.0 In the result, the appeal as well as cross objections filed by the opponent No.1-original claimant are allowed to the aforesaid

extent. Cross-objections filed by the opponent No.2 are dismissed. The opponent No.1 will be entitled for an additional amount of Rs.7,560/- towards compensation. The appellant will be refunded an amount of Rs.2355.40/-. The judgment and award of the Motor Accident Claims Tribunal (Main), Junagadh passed in M.A.C.P. 173 of 1984 dated 24.01.1989 is modified to the aforesaid extent. Rest of the judgment and award is confirmed. No order as to costs.

(K.S. Jhaveri,J.)

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